

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re:

Chapter 11

MEZZ57TH LLC
d/b/a John Barrett

Case No.: 20-11316

Debtor.

-X

THIRD AMENDMENT TO STIPULATION AND CONSENT ORDER

Mezz57th LLC (the “Operating Debtor”), the debtor in the captioned chapter 11 case and MIP 57th Development Acquisition LLC (the “Landlord”) stipulate to this Third Amendment to that certain Stipulation and Consent Order dated December 17, 2020 [Docket No. 101] (“Stipulation”), extending the term of the Stipulation pursuant to paragraph 8 thereof, and hereby agree to the following amendments.

Amendment

1. Paragraph 1 of the Stipulation is amended to be:

For the period of October 1, 2020 through May 31, 2021, in lieu of Fixed Rent and additional rent under the Lease, the Operating Debtor shall owe Landlord interim monthly rent (the “Interim Rent”) in the amount of 16.5% of gross sales net of merchant fees and taxes (the “Gross Sales”).

2. Paragraph 6 of the Stipulation is amended to be:

Landlord agrees not to terminate the Lease in accordance with Article 16.01(a) of the Lease solely for failure to pay Fixed Rent or any additional rent under the Lease, or for any non-monetary alleged defaults under the Lease prior to the date hereof, until the earlier of (i) June 1, 2021 or (ii) the Operating Debtor’s failure to make Interim Rent payments after expiration of applicable grace periods under this Stipulation and Order. The Operating Debtor agrees to abide by all other provisions of the Lease during the term of this Stipulation and Order, and Landlord reserves the right to terminate the Lease during the term of this Stipulation and Order in the event of default under Article 16.01 of the Lease (aside from Article 16.01(a) and as otherwise set forth in this Stipulation and Order) that first occurs after the date of execution of this Stipulation and Order.

3. Paragraph 8 of the Stipulation is amended to be:

On June 1, 2021, absent a written Stipulation and Order executed by and between Landlord and the Operating Debtor to amend and/or extend the Lease or the terms of this Stipulation and Consent Order, the Lease shall be deemed rejected under section 365 of the Bankruptcy Code and shall immediately terminate, and the Operating Debtor consents, and shall not object, to (i) termination of the Lease without the requirement or necessity of the Landlord to serve a notice of termination, (ii) immediate surrender of the Premises, (iii) the entry of an order by the Bankruptcy Court compelling its surrender of the Premises, and (iv) the termination of the automatic stay

4. Paragraph 12 of the Stipulation is amended to be:

Landlord hereby withdraws the Lease Extension Objection, without prejudice, and consents to the extension of the Operating Debtor's deadline to assume or reject the Lease through and including May 31, 2021; provided, however, that in accordance with section 365(d)(4) of the Bankruptcy Code, any further extension of the Operating Debtor's time to assume or reject the Lease may only be permitted upon written consent of the Landlord.

5. Except as amended and extended pursuant hereto, no other changes or modifications to the Stipulation are intended or implied and in all other respects the Stipulation is hereby specifically ratified, restated and confirmed by all parties hereto.

6. The parties hereto agree and request that this Third Amendment to Stipulation and Consent Order be entered as a Consent Order by the United States Bankruptcy Court for the Southern District of New York.

**We hereby consent to the form and entry
of the within Third Amendment to Stipulation and Consent Order:**

GOLENBOCK EISEMAN ASSOR
BELL & PESKOE LLP

Counsel for Landlord

By: /s/ Jonathan L. Flaxer
Jonathan L. Flaxer

BALLON STOLL BADER &
NADLER, P.C.

Counsel for Operating Debtor

By: /s/ Vincent J. Roldan
Vincent J. Roldan

Dated: April 29, 2021

Dated: April 29, 2021

SO ORDERED:

/s/ Sean H. Lane

UNITED STATES BANKRUPTCY JUDGE

Dated: April 30, 2021